84-618

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON
Petitioner,

V.

SAFEWAY STORES, INC.
Respondent,

ON PETITION
FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The broad issue which cuts across the case is whether the belief in the United States of the right of a fair trial for all people is a reality or a myth?

2. Whether the court has the authority to deprive a party of the right of a fair trial because "the powers that be" have decided the case is too good for the justice system to handle?

3. Whether the court erred in entering the Motion to Dismiss as to the survivors of one of the beneficiaries?

4. Whether the court erred and abused its discretion in the following pre-trial orders:

(A) The Protective Order of April 12, 1983.

(B) The Order of May 20, 1983 and May 26, 1983 entered after the Affidavit of Disqualification had been

filed contrary to USC, Title 28, Section 144 and Section 455.

(C) The court's Order of June 21, 1983 overruling the Plaintiff's Motion for the Court's recussal and denying Plaintiff's Motion for a Continuance.

(D) The Protective Order preventing Appellant from taking the deposition of Safeway's Chief Executive Officer and others made at the hearing at which the court announced his disqualification on July 15, 1983.

(E) The court's Order on August 4, 1983 denying Plaintiff's Motion to Vacate, Set Aside or Modify Protective Orders and other Orders and our Motion for a Continuance, which Protective and other Orders adverse to the Plaintiff should be vacated, modified or set aside by this court.

5. Whether the court erred and committed an abuse of discretion in denying

Plaintiff's Affidavit of Disqualification on August 31, 1983?

6. Whether the court committed errors and abuses of discretion in the following rulings which affected the substantial rights of the Plaintiff, and constituted a violation of due process and prevented Plaintiff from having a fair trial:

(A) Refusing to permit Plaintiff to file his Second Amended Complaint.

(B) Refusing to permit Plaintiff to present his theory of the case to the jury during the opening statement, during Dr. Nelson's testimony and closing argument.

(C) Limiting Plaintiff's crossexamination of the store manager with regard to the number of people that have died as a result of injuries received from the operation of stock trucks and as to Defendant's strategy for him to be at

trial rather than the Chief Executive Officer of Safeway.

(D) Conduct and rulings of the court during examination of the witnesses.

(E) Refusal to permit Plaintiff to introduce the death certificate during Dr. Rowland's expert testimony or to permit Dr. Rowland to testify as to its contents.

(F) Refusal to permit cross-examination of the witnesses with regard to statements taken from Jim Clark and Lilly Wyatt and admission of those statements.

(G) The court's ruling that the Plaintiff would not be permitted to amend to conform to proof.

(H) The instructions of the court focusing on the employee, Jim Clark's negligence rather than on Safeway Stores, Inc.'s negligence and the court's failure to give the business invitee

instruction requested by the Plaintiff.

7. Whether Defense Counsel's cross-examination of the expert witness and his closing argument was designed to have the jury believe that Plaintiff's attorney was being dishonest with the jury and misleading them and whether the conduct of defense counsel was improper, fraudulent and constituted an abuse of discretion and a violation of due process of law, thereby depriving the Plaintiff of his right to a fair trial, in the following particulars:

(A) Whether Defense Counsel testified, argued his case in opening statement, and made misstatements of law and fact.

(B) In cross-examining the Plaintiff's expert witness, did Defendant misrepresent Plaintiff's attorney's statement to the expert witness.

(C) Did Defense Counsel convey to the jury that Plaintiff's Counsel had

"trumped up this case."

(D) Did Defense Counsel present to the jury that Plaintiff had been paid by Medicare.

(E) Did Defense Counsel make attacks on the expert witness and his character.

(F) Did Defense Counsel introduce the correspondence with the previous attorney under the guise of being part of Dr. Fotioo's medical records, and was this contrary to the agreement to avoid surprise and contrary to the stipulation that permitted the doctors and hospital medical records to be introduced.

8. Whether the court erred and committed an abuse of discretion in denying Plaintiff's Motion for a New Trial?

9. Whether the assignment of the trial judge was made with the intent of providing a fair trial for both parties, or with the intent of punishing the

Plaintiff for his efforts to obtain a fair trial?

10. Whether the court erred and committed an abuse of discretion in failing to grant Plaintiff's Motion for Production of Tapes of the hearing and of the trial and in failing to approve Plaintiff's Statement of the Proceedings when no Record was Made covering the bench conferences?

11. Whether there was a violation of administrative due process in the selection of the judges in the United States Court of Appeals?

12. Under our Constitution, what constitutes a violation of the standard of good behavior with regard to United States Judges holding their office?

LIST OF PARTIES

Safeway Stores, Inc.
Willie R. Bratton, Administrator of the Estate of Sarah Mallissia Bratton, Deceased
Mr. Rex E. Lee

Honorable Donald P. Lay
Honorable Myron H. Bright
Honorable William R. Overton
Honorable Henry Woods
Mr. Alvin Laser
Ms. Sandra Smith
Ms. Suzanne Thompson
Mr. Tom Lancaster

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I. OPINIONS OF COURTS BELOW

The Panel decision of the United States Court of Appeals for the Eighth Circuit dated May 8, 1984 was not published pursuant to Eighth Circuit Rule 14, and the Opinion is in the Appendix (Appx. A-26)

II. GROUNDS FOR JURISDICTION

The Eighth Circuit affirmed the judgment of the trial court on May 8, 1984, and entered judgment that same date. Prior to the Panel's Opinion, Petitioner had filed the suggestion that the case be heard en banc and upon denial of that suggestion, filed a Petition for Reconsideration that the hearing be en banc. Reconsideration was not had and after the Panel's Opinion, Petitioner's Petition for Rehearing was denied on June 15, 1984, and on September 11, 1984, an Order extended the time to file the Petition for Writ of Certiorari to October 13, 1984.

The Petition is filed pursuant to Title 28, USC, Section 2101(c) and Title 28, USC, Section 1254, is believed to confer on the United States Supreme Court jurisdiction to review the judgments in question by Writ of Certiorari.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Provisions of the United States Constitution

Article III, Section 1 (A-38)

Article VI, Sections 2 and 3 (A-38)

Amendment V, (A-38,39)

Amendment VII, (A-39)

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Statutes

Title 28, USC, §144, (A-40)

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STATEMENT OF THE CASE

On Saturday morning around 11:00 a.m. on March 3, 1979, a Safeway employee, 6' tall shortly out of high school came through the swinging doors in the produce section of a Safeway Store in Hot Springs, Arkansas pushing a stock truck loaded with potatoes weighing 360 pounds down the aisle which at its loaded height of 4½ to 5' had a blind spot of 6½ to 24 feet and tried to go between two customers pushing grocery carts on an aisle crowded with customers, 6 to 8' wide. Sarah Mallissia Bratton's grocery cart was struck by the stock truck causing her to fall and fracture her hip. Plaintiff's proof showed she died as a result of a cardiac arrest due to the hip fracture on April 13, 1979. Mrs. Bratton's father was James Elwood Johnson who aided Judge Isaac Charles Parker in bringing justice to the Western District of Arkansas in the late 1800's by

serving as a deputy U.S. Marshall in the Indian Territory. She brought up four sons and two daughters on a hillside farm in the way of the Lord to be God fearing and honor the values of the United States. Her sons had served in military service and in combat. She was close to her family but lived alone. At the time of her death she was 85 or 86, but continued to negotiate steep steps at her home in Hot Springs, Arkansas and walk all over town. She was in reasonably good health for her age with most of the medical evaluations of her cardiovascular condition being normal and used a cane on her walks for physical protection as she had been attacked. Willie Bratton, the Administrator of Mrs. Bratton's Arkansas Estate brought suit against Safeway Stores, Inc., a Maryland Corporation in Garland County Circuit and upon taking a nonsuit, filed in Federal Court on the

basis of Diversity of Citizenship and amount on August 24, 1981 with an amended complaint for punitive damages filed on December 27, 1982. One of the survivors, Doug Bratton died before trial and his family's claim was dismissed on February 3, 1983.

The first protective order and the other orders and the protective order entered by Judge Overton which prevented the taking of Safeway's Chief Executive Officer and others at the hearing on his disqualification prevented Plaintiff from receiving meaningful discovery; with the written order preventing Plaintiff from taking the deposition of all officers and people designated in the notice and maintained the discovery cut-off contrary to his statements in the transcript at the hearing; after the hearing the court coordinator who had suggested that Judge Woods serve several times during the hearing,

stated, "we know what you intended and I or we are going to see that this case goes to trial on August 31." Judge Woods was selected as the court coordinator suggested and he maintained the trial date and on August 3, he refused to vacate the protective orders and grant Plaintiff a continuance. Plaintiff had filed an orientation as to Plaintiff's complaint for punitive damages (C.A.Appx.231-242) setting forth Plaintiff's proof of Safeway's fault for the occurrence, that the operation of the stock truck typified the second major cause of injuries to customers and Safeway's lack of plan to operate the stock truck, thereby communicating to the Judges the "Pinto" rationale.

The court on August 18 prevented Plaintiff from obtaining the number of persons killed as the result of the operation of a stock truck from Safeway and

other matters.

On August 17, the Court denied objection for reconsideration of August 3 order and as the Court had terminated discovery, Plaintiff filed on August 24 his Motion to file a Second Amended Complaint setting forth the grounds for punitive damages.

The Eighth Circuit denied Petitioner's Petition for Writ of Mandamus or Prohibition and Justice Blackmun denied Petitioner's Application for Stay the day before trial.

Plaintiff filed an Affidavit for Disqualification for Judge Woods due to the problems with the then Henry Woods as trial attorney in the Connell v. Steelhaulers case, 455 F.2d, 688 (1972) and his ruling herein, which was denied on August 31, at the trial before a six member jury.

The Court refused to permit Plaintiff

to present his theory of the case to the jury during opening statement, during Dr. Nelson's testimony and during closing argument and objected frequently in a loud and angry voice, "I will sustain the Defendant's objection", when the Defendant's attorney had not even objected. During the bench conferences it was the Judge that bore the brunt of the argument in Safeway's behalf as to why the evidence should not be introduced and then sustained his objection, which bench conferences were allegedly not recorded. At bench conferences the Court prevented the death certificate from being introduced and statements taken from the witnesses which were furnished in Safeway's interrogatories.

Defense counsel made comments about a history of falling, no causal relationship, lawyer can dream up these things like Safeway's web of deceit, lawyer's

creation, Plaintiff's paid witness - If it's your opinion - it's mine, if you believe as I do...that's the end of the lawsuit, and ordinary care - what is ordinary - what everybody else is doing. (T.R. 30, 32, 33, 38, 39, 313, 312, 326, 306, 308, 325, 323, 307, 314-315) After testifying as to "identification", "evaluation" and "control" of safety hazards, the Court objected frequently or sustained such objections by Defendant as "Oh now, your honor," during Plaintiff's examination of the Safety engineer covering such topics as the competence of Safeway's management, OSHA, cost of customer accidents and cost savings (T.R. 176-178, 181, 183, 189-191) and the most probable explanation of Safeway's failure to provide an accident prevention program (T.R. 179). Plaintiff made his Proffer of Proof. (T.R. 192-198) Defense counsel started his cross by presenting

Plaintiff's conference with the expert in the hall as requesting him to engage in serious misconduct to which Plaintiff objected and requested to clarify immediately, but the Court would not let Plaintiff clarify until redirect.

Defense counsel attacked Plaintiff's attorney personally in closing argument, telling the jury the lawsuit's this lawyer's creation giving the example of this lawyer having sent the family to a psychiatrist, hired out the expert, Medicare payments, and correspondence of the previous lawyer with Dr. Fotioo and then states, he says in there: "I don't know what killed the lady."

The Motion for New Trial reveals that Dr. Fotioo was concerned later on that Plaintiffs would sue him for malpractice due to his failure to let Mrs. Bratton back in the hospital but that the certified death certificate which Dr. Fotioo

had signed revealed his opinion that the cause of death was cardiac arrest due to or consequence of an old hip fracture in March, 1979, which death certificate the Court would not permit to be introduced in evidence.

The Court's instructions focused on Jim Clark, Safeway's employee and the Court failed to give the business invitee instruction requested by Plaintiff. The Court would not let Plaintiff amend or state his theory in closing argument. (T.R. 283, 288-290 and 312)

The jury returned a verdict for the Defendant. The Motion for New Trial, Production of Tapes and Statement of the Proceedings when no Record was Made was denied by Judge Woods and an appeal filed.

Plaintiff's Petition for Hearing En Banc was denied and he filed a Motion for Production of Tapes, first through third supplements, the second being filed April

30, and third sent May 3, after denial of en banc consideration in which Plaintiff reluctantly informed the court of his conversation with the trial judge's good friend, and his comments about playing the game by the rules which Petitioner believes led to certain important things such as the Court coordinator's comments and the Judge's objections that he discussed with the trial judge's good friend about the hearing and the trial missing in the transcript.

Between the docket entries on May 7 and May 8 one dated April 27 shows up.

The panel filed its decision on May 8.

Plaintiff then filed a Petition for Rehearing En Banc and a Motion to Stay the Mandate which were denied and an Objection to Violation of Administrative Due Process, Objection to Violation of Checks and Balances and Affidavit of Disqualification of Judge Bright for con-

sideration en banc and set forth the secondary issue of the case and concepts of,

Power v. Authority

Justice v. Politics

questioning "who are the powers that be?", whether Judge Bright was chosen, Chief Judge Lay's involvment and whether communications have taken place between the Appellate Court and the Executive Branch seeking the truth of who ultimately is responsible.

On July 11, Plaintiff was advised that no further pleadings would be received which before receipt Plaintiff had sent pleadings including an Affidavit of Disqualification for Chief Judge Lay and others, on July 12. Thereafter he prepared an Affidavit of Disqualification for Judge Gibson and Judge Bowman and researched a motion to recall the mandate to enable the Court en banc to consider

the merits of Plaintiff's position, when Plaintiff received the order in the Gilbert and Williams v. Landers and State Farm case dated August 13 from the Court. (Appx.A-9).

An order was entered extending the time to include October 13, 1984 to file a Petition for Writ of Certiorari.

ARGUMENT FOR ALLOWANCE OF THE WRIT

The Plaintiff's proof shows that he has caught Safeway Stores, Inc. in the same situation as Ford in the "Pinto Case". Safeway saves in excess of One Hundred Million Dollars over a four to five-year period by virtue of not having an accident prevention program, a savings which it extracts at the expense of injury to thousands of its customers and the death of a great many of Safeway's customers including Sarah Mallissia Bratton.

If Plaintiff has caught Safeway

Stores, Inc. in the same situation as Ford in the "Pinto Case", and Plaintiff respectfully submits there is no valid proof in this record which would indicate otherwise, then the case is probably one of the most important cases on the merits presently pending in the United States Appellate Courts.

However, of greater significance, Bratton v. Safeway is probably the most important case in the history of the United States where those that are required by law in our government to work to attain a fair trial, have in fact worked to deprive a party of the right of a fair trial and a fair appeal.

The broad issue is:

"Whether the belief in the United States of the right of a fair trial for all people is a reality or a myth?"

The case went to the United States

Court of Appeals on Petitions for Writ of Mandamus or Prohibition twice before trial and the United States Supreme Court turned down our Application for Stay the day before trial. Under the circumstances, it should have been obvious that Plaintiff would not receive a fair trial.

Of greater concern than with piecemeal appeals then, are piecemeal trials and the injustice of unfair trials where the people of this country lose faith in our justice system.

If possible, the Petition for Writ of Mandamus or Prohibition and the Application for Stay should be reviewed and a decision made on their merits.

The secondary issue in the case is:

"Whether the Court has the authority to deprive a party of the right of a fair trial because the 'powers that be' have determined that the case is too good for the justice system to

handle?"

In other words, if the case were to proceed in normal course and justice obtained, then the case literally has the potential to bankrupt Safeway and could possibly have a disruptive effect on the economy of this country.

Petitioner believes that in its decision-making process, the Court can operate either from a base of power or authority. The concept of authority is that all authority comes from God and there is no authority except from God. (The Holy Bible, Romans 13:1) In humbling themselves to be obedient to God, the court will then function agreeably with our Constitution and our law.

> "Good and upright is the Lord...he leads the humble in justice."

(See also The Holy Bible, 25th Psalm beginning at 8, Micah 6:8 and the Oath of Office) On the other hand, God as with

all other human beings, gave each member of the court free will. As such, each member of the court is free to do whatever he wants to do for whatever reason even though the action of the court is diametrically opposed to the Constitution, and diametrically opposed to the law.

"Authority" or "Power"

"Justice" or "Politics"

It is Petitioners' position that there has been a violation of administrative due process at the trial and Appellate level, and that the Trial Judge and the Appellate Judges were not chosen to do justice, but rather to thwart justice and to make sure that the Plaintiff lost the case and the appeal. The opinion written by the panel does not represent a fair, impartial and intelligent discussion of the issues, rather, it is written in such a way to cover up the wrongdoing and abuse of discretion. The

panel knew that Petitioner would probably be seeking a Petition for Rehearing En Banc and a fair and thorough presentation of the issues should not stand up on rehearing. As such, the findings and conclusions of the panel are contrary to the law and the facts and were made knowing that the court en banc would rely on them.

A review of the Statement of the Issues reveals that of all the points asserted by Bratton, there is only one, the survivorship issue, and whether the Supreme Court's decision that the cause of action is vested in the personal representative meant what it said, in which there was any question. All the rest, if reviewed by a fair and impartial tribunal under the rule of law, Bratton clearly should win.

As the court knew this, the court's strategy of which the Chief Judge was a

part, was to prevent the Court en banc from considering the substance of Petitioner's position. At the time the court directed on July 11, that Plaintiff not file any further pleadings in this cause, the court had been forewarned of an Affidavit for Chief Judge Lay's Recusal which was sent together with a Second Petition for Rehearing En Banc, and the Chief Judge and the Panel prevented a fair review en banc.

The Affidavit to Motion for New Trial revealed that during oral argument in the case of Connell v. Steelhaulers, 8 to 10 years ago, Judge Bright had questioned me for most of my thirty minutes of argument as to whether or not one of five or six sub-points of one of five or six major points, was or was not a golden rule argument, thereby effectively protecting Henry Woods and depriving me of my time to effectively argue my points for reversal

to the Court.

If Judge Bright's sense of direction in this case were that of justice, then it would be difficult to find a judge on any of the United States Court of Appeals more capable of rendering justice in the proceeding; however, as Justice Frankfurter stated in his dissent in United States v. Rabinowitz, 339 US 56 (1950):

> "It is also true of journeys in the law that the place you reach depends on the direction you are taking and so, where one comes out in a case depends on where one goes in..."

Knowing Judge Bright's willingness to use power rather than authority; knowing that Judge Bright had protected the then Henry Woods in oral argument in Connell v. Steelhaulers; knowing Judge Bright was the senior member of the Panel that turned down our Petition for Writ of Mandamus or Prohibition on the eve of the trial of this matter, and knowing that Judge Bright

would have to reverse his previous position in the case concerning those things which were alleged to be improper prior to trial; then how was Judge Bright selected to serve as the senior member of the Panel which rendered the Opinion in this case on May 8, 1984? Petitioner respectfully submits that whether by choice or by chance Chief Judge Lay was responsible for Judge Bright's service and the question then must be raised, whether the other members of the Court were chosen as there is no dissenting opinion.

Discretion has by definition its perameters. It implies sound judgment applied by a Judge who has the ability to make responsible decisions in this particular case. Thus far, our government through the Panel Opinion has approved the means of fraud, dishonesty, destruction of Plaintiff's attorney's credibility and that of Plaintiff's experts, cheating and

other assorted "dirty tricks" to win. The government has approved the trial judges choosing which party to a lawsuit is to win and then through the means of protective orders without legal justification and other orders prior to trial protecting that party from the truth and then at trial for the court to prevent the party from introducing evidence without any legal justification, frequently objecting in a loud and angry voice and sustaining Defense Counsel's objection when no objection was made, then removing the evidence of the court's improper conduct so that it does not appear in the transcript and preventing Plaintiff's attorney from presenting his theory of the case to the jury and in these and many other ways the court created an atmosphere of injustice with the intent of causing Plaintiff to lose the case and then administratively for a judge to be selected in appellate pro-

ceedings where his obvious sense of direction is not justice but the protection of the judges, Defense Counsel and Safeway Stores, Inc.

In deciding that the ends justifies the means, the panel has rendered a decision as stated in the provisions of Rule 17 of the Rules of The Supreme Court of the United States.

Plaintiff had prepared Affidavits for Disqualification for Judge Gibson and Judge Bowman and had researched a Motion to Recall the Mandate to enable the court en banc to receive the necessary information to make a fair decision; however, the court's order in Gilbert and Williams v. Landers and State Farm case (A-7) indicated that the court might well rely on power and put Plaintiff's attorney in the federal penitentiary if he filed these pleadings.

The Affidavits filed in Gilbert and

Williams v. Landers and State Farm case and in this case for disqualification of Judge Lay set forth his comments on the ABC Television program with Ted Koppel which necessitated his administering to cover up the judges' wrongdoing.

If the Opinion of the Panel is not justice, but rather politics, then the question must be, "who are the 'powers that be'?" In their simplest form, questions seek the who-what-where-when-why and-how of a situation.

It is Petitioner's position that the integrity of the judicial process in this country is at stake and as such, it is the responsibility of this Court to resolve these questions.

In determining the cast of the "powers that be", in this instance, whether independently or cooperatively, two United States District Judges, two Court Reporters, one Court Coordinator,

three Judges on the United States Court of Appeals, the Chief Judge of the United States Court of Appeals and potentially the other Judges on the United States Court of Appeals who turned down our Petition for Writ of Mandamus or Prohibition and an associate justice on the United States Supreme court who turned down our Application for Stay, under circumstances wherein the average person on the street corner with knowledge of the circumstances would know that Plaintiff would not receive a fair trial, have been identified as in the cast of characters that have contributed to depriving the Plaintiff of his right of a fair trial and a fair appeal. The question then must be asked concerning the "powers that be", would this conduct have happened unless assured of protection? Were the trial Judges Democratic appointments? Were the Judges on the Panel Republican appoint-

ments or Republicans by preference? Have the administrative people or person in the two appellate courts conferred and have they in turn conferred with the administrative people in the Executive Branch including possibly even the President of the United States?

Is the credibility of the present President of the United States with the American people primarily attributable to his turning the economy around? Who, in an election year, would be most concerned about the potential destructive effect of a responsible opinion by the Court in this case on Safeway Stores, Inc., one of America's leading major corporations, with its headquarters in Oakland, California? Who would be most concerned about the effect on other grocery stores and the price of food in the United States and a potentially disrupting impact on the economy of this country and therefore, poten-

tially a significant impact on the chance of reelection of the present President of the United States? Who?

Perhaps there is no substance to these questions. However, when the actions of the Court do not correspond with the ideals of the country, there has to be a reason and relevant questions must be asked. One of the tasks of Justice is to determine the truth.

In a government under the rule of Law and not of men, the people have the right to decide whether thousands more will be injured and many die or whether Safeway should be required to adopt an accident prevention program. Missouri Pacific Railroad Co. v. Arkansas Sheriff's Boy's Ranch, 280 Ark. 53 (1983).

While the Reagan Administration is actively involved in our Justice System, the ends in America no matter how appropriate they are believed to be,

should not justify means that are not founded in our Constitution and our Law. In a government under the rule of law, no man is above the law, and political decisions should not outweigh justice. See Hazel Glass Co. v. Harper Empire Co., 322 US 238 (1944).

Whether the Court erred in entering the Motion to Dismiss as to the survivors of one of the beneficiaries?

Of all the points asserted by Bratton, this is the one issue in which there is any controversy. In contrast to the Panel's decision, it is Plaintiff's position that the case of Lowell E. Waldrip, Administrator v. McGarity, 270 Ark. 305, 605 S.W.2d 5 (1980), overrules the other case:

> "The cause of action vests in the personal representative but with the recovery apportionable among the individual beneficiaries."

The Court erred and abused its

discretion in the following pre-trial orders:

(A) The Protective Order of April 12, 1983 holding that the Defendant did not have to respond to most of Plaintiff's Interrogatories, and almost all of Plaintiff's Request for Admissions and Requests for Production of Documents.

Judge Overton's protective order of April 12, 1983 denied the Plaintiff meaningful discovery. This chart shows the effect of his order:

Submitted	Required to be Answered
Interrogatories-96	18
Request for Admission -45	2
Request for Production of Documents -16	1

A review of the briefs, motions and responses reveal that as far as Defendant's assertion in seeking the Motion for Protective Order:

> "a. Examples given - no substance.
> b. Cases cited - do not support Safeway's position
> c. Grounds cited - generalities, contrary to Rule in 8th Circuit
> d. Concerns cited by Safeway - not relevant, in reality - concern was "too relevant"

> e. No affidavit attached to afford justification for Protective Order
> f. No balancing of benefits to Defendant v. hardships conferred on Plaintiff
> g. Bottomline - Safeway's goal in seeking Protective Order, not justice, but injustice - protection from the truth."

Perhaps there were a few objectionable questions under Rule 33, F.R.Civ.P., however, there was no justification for the protective order. See Hickman v. Taylor, 329 U.S. 495 (1957) and General Dynamics Corporation v. Cell Manufacturing Corporation, 481 Fed.2d 1204 (C.A. 8th, C.A. 8th 1973, Cert. denied 414 U.S. 1162). Proffer of Proof (C.A.Appx. 442-448).

The protective order issued by the Court constituted an abuse of discretion, violation of due process of law, and the right to a fair trial, and constitutes governmental interference with one of the basic rights of the parties, the right to know the truth. (These principles apply

to all remaining questions raised.)

(B) The Order of May 20, 1983 and May 26, 1983 entered after the Affidavit of Disqualification had been filed contrary to USC, Title 28, Section 144 and 455.

(C) The court's Order of June 21, 1983 overruling the Plaintiff's Motion for the Court's recussal and denying Plaintiff's Motion for a Continuance.

(D) The Protective Order preventing Appellant from taking the deposition of Safeway's Chief Executive Officer and others made at the hearing at which the court announced his disqualification on July 15, 1983.

In view of problems in obtaining discovery from William R. Overton's client in a suit which Willie R. Bratton had against it and the protective order entered by Judge Overton in this case, it was necessary for Plaintiff to file an Affidavit of Disqualification for Judge Overton, (CAAppx. 243 et seq), on May 3, 1983. Entry of these orders after the filing of the Affidavit is contrary to Title 28 USC Section 144.

The statute is designed to prevent the inherent injustice of a party being an adversary of an opposing party and the United States District Judge. See Mitchell v. United States, 126 Fed.2d 550 (1942) cert. den., 62 S.Ct. 1307 and Title 28 USC 144. See Turner v. American Bar Association, 407 Fed. Supp. 451, 483 (1975 D.C. 1975) and Bell v. Chandler, 569 Fed. 2d 556 (1978 C.A. 10th Okla).

If a Judge were free to deny his recussal and then enter orders gutting the Plaintiff's case and after being satisfied that he had destroyed the Plaintiff's case, then recuse, the intent of Sections 144 and 455 to provide a fair trial would be defeated.

(E) The court's Order on August 4, 1983 denying Plaintiff's Motion to Vacate, Set Aside or Modify Protective Orders and other Orders and our Motion for a Continuance, which Protective and other Orders adverse to the Plaintiff should be vacated, modified or set aside by this Court.

The Court's refusal to vacate the protective and other orders and grant Plaintiff a continuance evidences that Judge Woods was not capable of discharging his duties in a fair and impartial manner. Judge Woods knew that he was preventing Mr. Cartwright from serving and Plaintiff from obtaining the proof he needed from Safeway, and that Plaintiff would have to rely on the expert, knowing defense counsel's standard strategy to destroy the expert's credibility and that Plaintiff would have to seek relief.

As far as continuance, see 17 Am. Jur. 2d Continuance Section 5.

Whether the court erred and committed an abuse of discretion in denying Plaintiff's Affidavit of Disqualification on August 31, 1983?

Petitioner's affidavits for disqualification of the Honorable Henry Woods are found at 389 et seq and 418 et seq in the

C.A. Appendix.

In the previous case of Connell v. Steelhaulers, Inc., Petitioner's attorney argued that Plaintiff's attorney who was represented by the then Henry Woods surprised Defendant by misrepresenting a doctor's testimony and that Plaintiff's attorneys had made five improper arguments. Petitioner's attorney considers Judge Henry Woods' former law partner, Sidney McMath as one of the significant adults in his life who has in part helped to instill the values which Petitioner's attorney has tried to present in this case.

In questioning Section 144's application to the Disqualification of Judge Woods, see, however, United States v. Phillips, 64 F.2d 971 (C.A. Florida 1981), cert. den. 102 S.Ct. 2965, and ex parte N.K. Fairmount Co., 194 F.Supp. 978 (DC Ala. 1912).

Title 28 U.S.C. Section 455 and the "reasonable reting it establishes a "reasonable man standard." A judge faced with potential grounds for disqualification ought to consider how his participation in the given case looks to the average person on the street...and disqualification should follow if a reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality. See Potashnick v. Port City Construction Co., 609 Fed.2d 1101 (C.A. 1980) and U.S. v. Poludniak, 657 Fed.2d 948 (C.A. MO 1981), cert. den., 102 S.Ct. 1431. See further Knapp v. Kenzie, 232 Fed.2d 458 (C.A. Mich. 1956), cert. den., 77 S.Ct. 131. Under the circumstances, would the average person on the street harbor doubts about Judge Woods' impartiality?

Whether the court committed errors and abuses of discretion in the

following rulings which affected the substantial rights of the Plaintiff, and constituted a violation of due process and prevented Plaintiff from having a fair trial:

(A) Refusing to permit Plaintiff to file his Second Amended Complaint.

After the Court had refused to vacate the protective orders and grant a continuance, Plaintiff filed his Motion for leave to file a Second Amended Complaint on August 24, 1983, (C.A. Appx. at page 386) (C.A. Appx. at 134 et seq.) Defendant was forewarned of this amendment in December and March. See Moore Federal Practice section 15:08 (2) under the heading, Amendments Liberally Granted.

Amendment to pleadings is generally appropriate and permitted after discovery has been completed. See further, Missouri Pacific Railroad Company v. Arkansas Sheriff's Boys Ranch, 280 Ark. 53

(1983). (which was decided under Arkansas strict factual pleading as contrasted with Federal Notice pleading, and which was cited to the Court before and during trial.)

(B) Refusing to permit Plaintiff to present his theory of the case to the jury during the opening statement, during Dr. Nelson's testimony and closing argument.

See (T.R. 11, 13-15) and see Mo Pac case (supra). See T.R. 176-178, 181-183 and 187-191 for the Court's efforts in preventing Plaintiff from making his proof, especially when Dr. Nelson was asked the most probable explanation of Safeway's failure to protect its customers, Safeway's attorney objected and the Court overruled his objection. (T.R. 179), permitting Dr. Nelson to answer as follows:

> "A decision was that it's less costly to just go ahead and pay the claims

than to pay for accident prevention programs."

At which point the Court instructed the jury (in a very loud and angry voice) to disregard Dr. Nelson's answer and not to consider it in any regard. (T.R. 180, See further T.R. 187-192, Proffer of Proof T.R. 192-198).

At closing argument, the court instructed Plaintiff not to mention that Safeway had a corporate policy and would not let him amend. (See T.R. 283, 288-90,312)

In addition to the liberal rules regarding amendment, see Federal Rules of Evidence 702, 703 and 704, and also St. Louis I.M. & S. Ry. Co. v. Earle, 103 Ark. 356, 146 S.W. 520 (1912).

(C) Limiting Plaintiff's cross-examination of the store manager with regard to the number of people that have died as a result of injuries received from

the operation of stock trucks and as to Defendant's strategy for him to be at trial rather than the Chief Executive Officer of Safeway.

The strategy of the Court and Defense Counsel was to have the jury believe that this was a local problem rather than involving all 2,425 Safeway stores as evidenced by the Defendant's opening statement, argument and court's rulings and instructions. As such, the Court prevented the Plaintiff from cross-examining the local store manager that it was a matter of strategy for him to be there rather than the Chief Executive Officer of Safeway who in keeping with the motion picture "The Verdict" and the scene, "Now's the time for the publicity," came to Little Rock, Arkansas about 10 days before trial, as evidenced by a newspaper article which Plaintiff had brought to trial to cross-examine the store manager

and introduce it in evidence, (C.A.Appx. Motion for New Trial) and (C.A.Appx. Proffer of Proof); and had also prevented Plaintiff from covering the material in the subpoena duces tecum including the number of people that have died as a result of injuries from the operation of the stock truck and other matters.

(D) Conduct and rulings of the court during examination of the witnesses.

The courtroom behavior of a judge is most influential and a significant factor in guiding the trial of any cause to a verdict. At the time Plaintiff pointed out to the Court he was objecting and he made his classic response (T.R. 188), he had objected some 10 to 20 times in a loud and angry voice; thereby conveying to the jury that Plaintiff's attorney was continuously involved in improper conduct, and (psychologically), as Plaintiff's attorney is continuously involved in

improper conduct it would be totally improper for you to believe Plaintiff's theory of the case. Here, the Court, by virtue of its conduct prejudiced the minds of the jury against Plaintiff's attorney and against Plaintiff's case. See Wright and Miller Section 2809 at page 66. Further E. v. Lofton, 287 Fed.2d, 709 (8th Cir., 1961).

(E) Refusal to permit Plaintiff to introduce the death certificate during Dr. Rowland's expert testimony or to permit Dr. Rowland to testify as to its contents.

See Title 28 U.S.C.S. Section 803.12. See further Meth v. United Van Insurance Co., Fed.2d, 446 (3rd Cir., 1952) and 30 Am.Jur.2d Evidence Sec. 1113. See also Federal Rules of Evidence 702, 703, 704. (T.R. 256-258), (See Proffer of Proof-T.R. 352), and Federal Rules of Evidence 803 (9 and 3) and 402.

(F) Refusal to permit cross-

examination of the witnesses with regard to statements taken from Jim Clark and Lilly Wyatt and admission of those statements.

The Statements were taken by Safeway or its insurance company and were admissible as an admission against interest or part of their business records and constituted the statement of Lillie Wyatt and Jim Clark that Jim Clark had struck Mrs. Bratton's shopping cart and she stumbled backwards and fell. See C.A. Appx. 106, 107 and T.R. 89-92). See Fed. R. Evid. 801 (d) (1-2), 803 (6) and 402 and proffer of proof.

(G) The court's ruling that the Plaintiff would not be permitted to amend to conform to proof.

See Moore's Federal Practice Section 15.08 (2), 15-61 and 62 and Fed. R. Civ. P. 15 (c) and Moore's F. Practice 12-190 and 191. (T.R. 283, 288-290, 312) and Fed.

R. Evid. 702-704.

(H) The instruction of the court focused on the employee, Jim Clark's negligence rather than on Safeway Stores, Inc.'s negligence and the court failed to give the business invitee instruction requested by the Plaintiff.

The strategy of the Court and Defense Counsel was to make the jury believe that what was really at issue here was the negligence of one Safeway Store. The court went even further to focus on the negligence of the employee and failed to give the business invitee instruction requested by the Plaintiff. As the Court's instructions evidence the court's intent that Plaintiff lose, it would be a procrustean application of Fed. R. Civil Pro. 51 to hold it precludes relief, when this Court has been given equitable powers to rectify this wrong as stated in the N.K. Fairmont Co. case (supra) (C.A.Appx.

Motion for New Trial)

Whether Defense Counsel's cross-examination of the expert witness and his closing argument was designed to have the jury believe that Plaintiff's attorney was being dishonest with the jury and misleading them and whether the conduct of defense counsel was improper, fraudulent and constituted an abuse of discretion and a violation of due process of law, thereby depriving the Plaintiff of his right to a fair trial, in the following particulars:

(A) Whether Defense Counsel testified, argued his case in opening statement, and made misstatements of law and fact.

In considering the examples given in the Statement of the Case, such as "she had a history of falling" when in fact medical records showed she had fallen once years ago. "Ordinary care - what is ordinary - what everybody else is doing." "Creation

of lawyer". Why did the panel fail to find reversible error? In contrast, see Moore and Childers v. Cameron and Folk Construction Company , 282 Ark. 357 (1984). One mistatement of law - twice stated- constitutes reversible error. See further Isaacs v. U.S., 301 Fed.2d, 706 (8th Cir.), Wright and Miller, Section 208 at page 66, E. v. Lofton, 287 Fed.2d 709, (8th Cir. 1961), The London Guaranty Company v. Woeffle, 82 Fed.2d 325 (8th Cir., 1936), see Weinberger v. City of New York, 468 N.Y.S.2d 697 (Ap. div., 1983), and see Davis v. Safeway Stores, Inc., 195 Ark. 23, 110 S.W.2d 695 (1937).

(B) In cross-examining the Plaintiff's expert witness, did Defendant misrepresent Plaintiff's attorney's statement to the expert witness.

Defense counsel's conveying to the jury that Plaintiff's attorney had told the expert that when there was an objection to

get the answer out before the Judge stopped you, was not true and defense counsel knew it. The court's failure to permit Plaintiff to voire dire the witness immediately to correct the misrepresentation was extremely prejudicial to Plaintiff, but that was what the court intended. See Jennings v. Murphy, 194, Fed.2d. 35 (C.A. 7th Cir. 1952).

(C) Did Defense Counsel convey to the jury that Plaintiff's Counsel had "trumped up this case."

In telling the jury that just as there was no substance to the claim for mental anguish since the psychiatrist this lawyer sent the family to did not testify, there was no substance to their claim against Safeway, it was all a lawyer's creation, defense counsel was perpetrating a fraud on the jury and on the court. Defendant had been furnished with a copy of the psychiatrist's medical report and knew

that he had made positive findings of mental anguish in each family member and knew that the psychiatrist had moved to North Dakota. (Motion for New Trial) See F.W. Woolworth Co. v. Wilson, 74 Fed.2d. 439, (5th Cir.), and Aetna Life Insurance Co. v. Kelly, 70 Fed.2d, 589 (8th Cir.) and Anderson v. Day, 525 Fed.2d, 20. Am. Jur. 2d Trial Section 307, Section 310 and Section 315.

(D) Did Defense Counsel present to the jury that Plaintiff had been paid by Medicare.

In telling the jury the bills had been paid by Medicare, Defense attorney willfully engaged in improper conduct. See Isaacs v. U.S., 301 Fed.2d. 706 (8th Cir.).

(E) Did Defense Counsel make attacks on the expert witness and his character.

Defense counsel argued "he forfeited his right to be considered impartial -

he's paid - he's hired out. That's all he is." In discussing whether Mr. Meriweather is operating his store properly, "You can say it if you're being paid $600.00 a day to say it..." Counsel's approach was to suggest to the jury that Dr. Nelson could be paid to say anything and was.

Since the court had prevented Plaintiff from obtaining his proof from Safeway, Plaintiff had to rely on his expert witness for this proof and his credibility with the jury was crucial.

See Aetna Life Insurance Co. v. Kelly, 70 Fed.2d, 589 (8th Cir.) and St. Louis I.M. & S. Ry. Co. v. Earle,(supra). See also F. W. Woolworth Co. v. Wilson, 74 Fed.2d 439, (5th Cir.) and Section 305, 75 Am.Jur. 2d Trial at page 379-80.

(F) Did Defense Counsel introduce the correspondence with the previous attorney under the guise of being part of Dr. Fotioo's medical records, and was this

contrary to the agreement to avoid surprise and contrary to the stipulation that permitted the doctors and hospital medical records to be introduced.

Defendant's "big trick" was intended and did surprise Plaintiff as the note he had prepared to remind him to object was missing and was done with the intent of avoiding Dr. Fotioo's cross-examination with the death certificate Dr. Fotioo prepared to destroy Plaintiff's attorney's credibility and that of his case. (C.A.Appx., Motion for New Trial). See Meehan v. Gulf Oil Corp., 312 Fed.2d 737 (1963) Section 2809, Wright and Miller Federal Trial Practice and New York Central R. Co. v. Johnson, 279 U.S. 310 (1929). (C.A.Appx. Motion for New Trial)

Whether the court erred and committed an abuse of discretion in denying Plaintiff's Motion for a New Trial?

Safeway's problem in this case was

that it had no valid defense to either Plaintiff's complaint for compensatory damages or for punitive damages, which necessitated the court protecting Safeway if it were to win. To the credit of the Panel of the Court, is the finding in its Opinion of May 8, 1984...

> "Sarah Bratton, a customer in a Safeway Store in Hot Springs, was pushing a grocery cart when it was struck by a stock truck heavily loaded with potatoes, causing her to fall and to fracture her hip."

Why then did the jury return a verdict for the Defendant? At trial, Jim Clark contended that he had stopped and Mrs. Bratton had struck him. The store manager testified that he had not talked to Jim Clark before he had prepared the two accident reports several days apart. In contrast, Plaintiff had numerous Interrogatories, statements taken from Jim Clark, Ms. Wyatt, Requests for Admission and the two accident reports which reveal

that Jim Clark struck Mrs. Bratton's grocery cart and she fell backwards. Further, the store manager admitted through Request for Admissions on behalf of Safeway that he had talked to Jim Clark before he had prepared the two accident reports, and that Jim Clark had not told him anything different than what's on the accident reports. Nowhere on the accident reports is the version that Jim Clark gave at trial that Mrs. Bratton struck his stock truck.

Safeway did not have a statement of corporate policy for the safety of its customers. (T.R. 154)

Even though Safeway knew that the natural and probable consequence of no plan, no training and no reasonable instruction was the injury and death of its customers, and knew that under the principles of safety engineering, no risk of death or serious injury is acceptable

if it can be eliminated or if it cannot be eliminated steps must be taken to significantly reduce the danger or risk and warnings given, the distilled version of Safeway's defense is:

> "Isn't it OK for us to stock without any plan, training, instructions or warning because other grocery stores are doing it?'"

In contrast, Plaintiff's proof showed that others were night stockers and did have plans, training and instructions. In any event, that did not absolve Safeway Stores, Inc. from its own responsibililty to its customers.

The trial judge intended for Plaintiff to lose this case and did what was necessary to achieve that result in conjunction with Defense counsel's fraud, cheating and "dirty tricks" to convince the jury that Plaintiff's attorney was lying, cheating, being totally dishonest and totally misleading the jury, thereby

destroying the credibility of Plaintiff's attorney and Plaintiff's case, and making the jury indignant, thereby punishing Plaintiff's attorney and his client by rendering a Defendants verdict notwithstanding the facts and law were to the contrary.

See Lack Industry, Inc. v. Ross Company, 327 Fed.2d 266 (8th Cir. 1964), also Aetna Casual Insurance Company v. Sheets, 122 Fed.2d 350 (4th Cir. 1943), Simpson v. Scully Oil Company, 371 Fed.2d 563 (8th Cir. 1967). Section 2809 of Wright and Miller Federal Trial Practice and Agee v. Loftin, with regard to the conduct of trial judge, 287 Fed.2d 709 (8th Cir. 1961). Hazel Glass Company v. Harper Empire Company, 322 U.S. 238 (1944) and London Guaranty Company v. Woeffle, 82 Fed.2d 325 (8th Cir. 1936):

> "The judge, at least in the Federal Court, is more than moderator; he is affirmatively charged with securing a

> fair trial and he must intervene sua sponte to that end when necessary. Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that, in the end depends primarily upon the judge."

Whether the assignment of the trial judge was made with the intent of providing a fair trial for both parties, or with the intent of punishing the Plaintiff for his efforts to obtain a fair trial?

Plaintiff's Motion for Production of the Tapes of the hearing before Judge Overton reveals that the court coordinator was incensed with Plaintiff's efforts to obtain a fair trial and was bent on punishing the Plaintiff for his efforts, and that Judge Overton was cooperative in the fulfillment of her intent. Within this atmosphere of punishment, Judge Woods was assigned responsibility for this case just as the court coordinator had suggested several times during the hearing which suggestions do not appear in the

transcript. The fact that the court coordinator's comments are missing from the transcript gives insight as to the real reason Judge Woods was assigned to this case. If his assignment were not to punish, then there would be nothing to hide, and her comments would be in the transcript.

Petitioner renews his Motion for Production of Tapes and prays that upon review of those tapes and of the record in this proceeding, that the Court find that the trial judge was assigned to this case with the intent of punishing the Plaintiff and thereby protecting Safeway, and that he did not have the ability in this case to give both parties a fair trial.

Whether the court erred and committed an abuse of discretion in failing to grant Plaintiff's Motion for Production of Tapes of the hearing and of the trial and in failing to approve Plaintiff's

Statement of the Proceedings when no Record was Made covering the bench conferences?

The court must preserve the integrity of the Judicial process if respect and confidence in our Justice System is to be maintained. To deny Plaintiff's Motion in this case, is to condone corruption and encourage its practice in the future. This is equally true with the Statement of the Proceedings where no Record Was Made as Plaintiff followed appropriate procedure.

Whether there was a violation of administrative due process in the selection of the judges in the United States Court of Appeals?

It is Plaintiff's position that given the events that had taken place before trial, that it would be obvious to the average man on the street that if relief were not granted in the Petition for Writ

of Mandamus or Prohibition, Plaintiff would not receive a fair trial and the relief therefore must be granted. It was, however, not granted by the United States Court of Appeals. Why? A review of the Opinion of May 8 in contrast with the facts, constitution and the law reveal that it is written in such a way as to cover up the wrongdoing of the judges and defense counsel.

The Court's approval of the conduct at the trial and that of defense counsel is contrary to the values of America and the concept of fundamental fairness, due process, the right of a fair trial and equal justice under law. Contrary to the finding of the panel as to the case having no value as precedent, if permitted to be replicated, it could result in the downfall of our form of government and take over by the Communists. As William Pitt said, "Where law ends, tyranny begins."

As Kruchev admonished, "When America falls, it will not fall from nuclear weapons or missles from Russia or Red China, it will fall from within simply by breaking down our traditional respect for law and order."

Under our Constitution, what constitutes a violation of the standard of good behavior with regard to United States Judges holding their office?

Article III §1, U.S. Constitution:

> "...The Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior..."

It is Petitioner's position that it is important to the future of this country that we maintain the independence of the judiciary in the best sense of that expression. United States Judges perform one of the most important roles in our form of government. Our Constitution, our laws, indeed our form of government, mean little if not faithfully enforced by

United States Judges. If the judiciary functions in accordance with politics without foundation in our Constitution and our Law, rather than in accordance with the concept of authority as defined herein, the independence of the judiciary is threatened and people will ultimately respond to this abuse of power which some call Judicial Supremacy to achieve a check on it.

The government's involvement in Bratton v. Safeway in 1984 makes the government's involvement in the DeLorean case look like an almost innocent children's story.

Any system to be successful must have the elements of accountability and responsibility. As Senator Goldwater stated recently: "In a democracy, government is responsible for being accountable to the people and we are responsible for holding our government accountable." From a

Democratic perspective, President Harry Truman stated, "We get the government we deserve." In a government under the rule of law, no man is above the law.

While this is perhaps one of the first times this issue has been raised, the concern is primarily with those in a leadership position on the courts. If the leadership should believe that they are the law or that they are above the law, then everybody in this country is in jeopardy, as is our form of government. If they use power, rather than authority, then their example may well encourage the Judges below them to use power rather than authority. Each Judge should be encouraged to attain the best that is within them. In seeking the help of God, by first humbling themselves to be obedient to God, they will then be likely to act agreeably with our Constitution and our law in the attainment of Justice,

thereby maintaining fidelity to the trust imposed in them by the people.

It is far better that just as Associate Justice, Tom C. Clark, worked with the lawyers to achieve better standards of discipline within this country that the judiciary undertake that action within the framework of this case. Whatever Bratton v. Safeway may accomplish, hopefully it can be a significant step in the advancement and improvement in the quality of administration of our justice system.

The American Dream embraces as one of our basic rights, the right of all people to a fair trial. The Plaintiff herein did not receive a fair trial and a fair appeal. At issue in this case is the fundamental constitutional guarantee of the right of a fair trial, equal protection under law and due process of law. As the protection of the fairness of the judicial process is a substantial interest central

to the maintenance of liberty, and as this case raises fundamental questions about the fairness of the judicial process in this country, Petitioner prays that a Writ of Certiorari be issued to the United States Court of Appeals for the Eighth Circuit and that Petitioner be granted the relief he has requested and all other proper relief.

Respectfully submitted,

Eugene A. Matthews Jr.

Eugene A. Matthews, Jr.
Attorney for Petitioner
424 Ouachita Avenue
Hot Springs, Arkansas 71901
(501) 623-5005

APPENDIX

1. Order of United States Court of Appeals for the Eighth Circuit filed August 26, 1983

2. Order of Court of Appeals filed May 8, 1984

3. Correspondence directing no further filings in this case dated July 11, 1984

4. Order of Court of Appeals filed August 2, 1984

5. Order of Court of Appeals filed August 13, 1984 in companion case

6. Correspondence directing no further filings in companion case dated August 13, 1984

7. Order of United States District Court, Western District of Arkansas, Hot Springs Division dated February 3, 1983

8. Order of District Court dated April 11, 1983

9. Order of District Court dated June 21, 1983

10. Order of District Court dated August 3, 1983

11. Order of District Court dated August 17, 1983

12. Order of District Court dated September 26, 1983

13. Order of District Court dated February 23, 1984

14. Opinion of United States Court of Appeals for the Eighth Circuit filed May 8, 1984

15. Order of Court of Appeals filed June 15, 1984

16. Provisions of the Constitution and Statutes Involved

17. Summary of Statement of Jim Clark

18. Order of Court of Appeals filed April 19, 1984

19. Order of Court of Appeals filed May 8, 1984

20. Order of District Court dated July 15, 1983

21. Order of District Court dated July 15, 1983

22. Judgment of District Court dated September 1, 1983 and filed September 12, 1983

23. Order of District Court dated October 26, 1983

24. Order of Court of Appeals filed June 15, 1984

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 83-2124

In Re Willie R. Bratton, Administrator of the Estate of Sarah Mallissia Bratton, Deceased

Petitioner.

On Petition for Writ of Mandamus or Prohibition to the United States District Court for the Eastern District of Arkansas

---

Filed: August 26, 1983.

Before BRIGHT, ARNOLD, and FAGG, Circuit Judges.

ORDER

The Petition for writ of mandamus or prohibition is dismissed.

It is so ordered.

A true copy.

Attest:

CLERK, U.S. COURT OF
APPEALS, EIGHTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-2450-WA SEPTEMBER TERM 1983

Appeal from the United States
District Court for the
Western District of Arkansas

Willie R. Bratton, etc.

Appellant,

v.

Safeway Stores Inc.

Appellee.

Before the Court is appellant's motion for reconsideration and suggesting a hearing en banc. This motion was received by the Clerk's Office on the same day that the panel opinion was sent to the Clerk for processing for publication. Having considered the motion in light of the panel's opinion, appellant's motions for production of tapes and this Court's prior denial of appellant's motion for consideration of this case en banc, the motion is DENIED, without prejudice to

appellant's right to renew the issue in any motion for rehearing he may wish to file.

May 8, 1984

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

Robert D. St. Vrain
Clerk

314-425-5600
FTS: 279-5600

July 11, 1984

Mr. Gene Matthews, Jr.
Attorney at Law
424 Ouachita Avenue
Hot Springs, Arkansas 71901

Re: No. 83-2450-WA. Willie R. Bratton, etc. v. Safeway Stores, Inc.

Dear Mr. Matthews:

This office received and distributed to the Court your Objections and the memorandum brief in the referenced case. I have been directed by the Court to inform you that further filings in this case will be returned to you unfiled. You had indicated that a second petition for rehearing would be filed. Please do not forward a second petition for rehearing to this office because it will have to be returned to you.

Your motion for stay of mandate is still pending before the Court and you will be notified when the Court issues an order.

Sincerely,

Robert D. St. Vrain
Clerk of Court

RSTV/rmh

cc: Ms. Bevely A. Rowlett &
Mr. Ralph R. Wilson

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-2450-WA SEPTEMBER TERM 1983

Appeal from the United States
District Court for the
Western District of Arkansas

Willie R. Bratton, etc.

Appellant,

v.

Safeway Stores Inc.

Appellee.

It is now here ordered by the Court that appellant's motion for stay of mandate is denied.

August 2, 1984

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 82-2282 SEPTEMBER TERM, 1983

Appeal from the United States
District Court for the
Western District of Arkansas

DARRELL R. WILLIAMS, et al.
Appellees,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Appellant.

No. 82-2310

DARRELL R. WILLIAMS, et al.
Appellants,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Appellees.

No. 82-2430

DARRELL R. WILLIAMS, et al.
Appellees,
v.
ROBERT F. LANDERS,
Appellant.

Motion for recusal of the Honorable Donald P. Lay in the above matter has been considered by the Court and is denied.

In addition, the alternative motion for en banc consideration of the motion to recuse is denied on the basis that the denial of the rehearing en banc has been entered and there is no further matter pending before the Court.

August 13, 1984

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

Robert D. St. Vrain
Clerk

314-425-5600
FTS: 279-5600

August 13, 1984

Mr. Gene Matthews, Jr.
Attorney at Law
424 Ouachita Avenue
Hot Springs, Arkansas 71901

Re: Nos. 82-2285/2310/2430-WA.
Darrell R. Williams, etc. v.
State Farm Mutual Auto
Insurance, et al.

Dear Mr. Matthews:

Enclosed please find copy of oder entered today at the direction of the Court.

I have been instructed by the Court to inform you that no further filings will be received by this Court concerning this case. Your failure to adhere to this Court's direction in that regard could result in sanctions being imposed against you.

Sincerely,

Linda L. Penberthy
Senior Deputy Clerk

LLP/rmh
Enclosure

cc: Mr. Pat L. Graham, Clerk (Civ. 80-6062)
Mr. Don A. Smith
Ms. Beverly A. Rowlett and Mr. Alvin Laser
Mr. Arthur Bay
Mr. Ken Dewbre
Mr. H. David Blair
Mr. Gail Matthews

A-11

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED — PLAINTIFF

V. — NO. 81-6072

SAFEWAY STORES, INC. — DEFENDANT

ORDER

In accordance with the Memorandum Opinion entered in this cause on this date,

IT IS THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the complaint of the plaintiffs Juanita Bratton Epting and Emily Bratton, as survivors of E. Douglas Bratton, be and the same is hereby dismissed with prejudice.

DATED: February 3, 1983.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED PLAINTIFF

V. NO. 81-6072

SAFEWAY STORES, INC. DEFENDANT

ORDER

Before the Court is the motion of defendant for a protective order and the motion of plaintiff to compel discovery. The Court has reviewed the discovery documents and has concluded that many of the questions are repetitious, unduly burdensome, and the information obtained could serve no useful purpose. As an example, plaintiff's Request for Admission 28 states: "Admit that the name and advertisements of Safeway are intended to instill in its customers the belief that Safeway is a safe place for them to shop for their groceries." This question is, by its very nature, unfair and any

response would be misleading.

Accordingly, defendant is directed to respond only to the following:

Interrogatories Nos. 2, 5, 9, 11, 12, 15, 21, 22, 23, 43, 57, 74, 76, 77, 78, 79, 80 and 85.

Requests for Admission Nos. 7 and 13.

Requests for Production No. 2

dated April 11, 1983.

UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED PLAINTIFF

V. NO. 81-6072

SAFEWAY STORES, INC. DEFENDANT

ORDER

Plaintiff has filed an "Affidavit of Disqualification", requesting the Court to recuse in this case. Apparently, plaintiff claims that, while the Court was still in private practice, a discovery dispute arose between Mr. Matthews and the Court. It happens that Mr. Matthews' client in that earlier case was Willie Bratton, plaintiff in the instant case. The argument is that because, at that time, I resisted discovery requests in a case long ago forgotten, I am somehow prejudiced generally, or against Mr. Matthews and Mr. Bratton, specifically, in ruling on discovery matters. Such an argument is

preposterous and the Court finds it difficult to believe Mr. Matthews is serious in his allegations. If I were to recuse in every case in which a party was represented by a lawyer with whom I had previously disagreed over discovery, or some other matter, I would never try a case. Plaintiff's motion is denied.

Plaintiff's motion for a continuance is also denied. This case has been pending since August 24, 1981. It is a fairly simple case involving an accident which occurred in a Safeway food store. This case will be tried and disposed of on August 31, 1983, and no continuances will be granted.

Mr. Matthews continues to file objections in the Court's ruling concerning discovery in this case. Previous Orders have been entered overruling these objections. Plaintiff's position is well noted in the record. Plaintiff's objection is overruled and no further objections con-

cerning the Order denying the discovery requests will be entertained.

Dated this June 21, 1983.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED PLAINTIFF

V. NO. 81-6072

SAFEWAY STORES, INC. DEFENDANT

ORDER

Pending before the Court is the plaintiff's motion to compel with respect to defendant's answers to interrogatories and responses to requests for production filed July 18, 1983.

1. An officer or agent of defendsant is directed to sign the answers to the subject interrogatories.

2. Plaintiff's objection to defendant's reponse to Request for Admission No. 2 is without merit and defendant will not be ordered to delete that portion of the response after "Sarah Mallissia Bratton."

3. The copy of the report dated

March 5, 1979 given by Carl Merriweather and attached as Exhibit A to the plaintiff's motion to compel is legible and defendant is directed to respond to request for admission No. 3 based on this copy. Counsel for defendant is welcome to the Court's copy for inspection if desired.

4. The manuals sought by Interrogatory No. 1 are apparently in the possession of plaintiff's counsel to the extent such manuals exist and defendant will not be directed to further respond to this interrogatory.

5. Defendant's response to Interrogatory No. 2 is that plaintiff currently has in his possession the information sought to the extent it exists and therefore no orders will be entered directing defendant to further respond.

6. The materials requested in request for production No. 1 have been provided to plaintiff to the extent they

exist and no orders will be entered directing defendant to further respond.

7. Defendant's response to Request for Production No. 2 does not satisfactorily respond to that portion of the request concerning "writings or memoranda" and therefore, defendant is directed to furnish plaintiff any writings or memoranda concerning risk acceptable decisions in the operation of a stock truck for/during 1975 through May, 1983.

8. Request for Production No. 3 was the subject of Judge Overton's protective order and his orders will not be vacated.

9. Defendant's objection to Interrogatory No. 3 is overruled and defendant is directed to respond as to the defendant's net worth and not as to the net worth of the particular store involved.

10. Request for Production No. 4 is too ambiguous and defendant will not be ordered to respond further.

11. Defendant's response to Interrogatory No. 4 is adequate. If it has no such records, it cannot produce them.

12. Defendant's objection to Interrogatory No. 5 is sustained. The use of the words "killed by injuries" is unduly prejudicial.

13. The Court construes the defendant's response to request for admission No. 5 as including an admission that the Safeway Produce Fundamentals Manual was in full force and effect on March 3, 1979 and therefore, defendant will not be ordered to respond further.

14. Defendant is directed to furnish plaintiff pages 25 and 26 of the manual referred to in Request for Production No. 5.

15. The discovery sought by Interrogatory No. 6 was the subject of a protective order entered by Judge Overton and his orders will not be vacated.

As mentioned above, the Court finds no cause for vacating the discovery orders entered by Judge Overton prior to his recusal and plaintiff's separate motion seeking this relief is denied. The Court also finds that there is no basis for continuing the trial of this matter and plaintiff's motion for continuance is denied.

This 3rd day of August, 1983.

HENRY WOODS, U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED PLAINTIFF

V. NO. 81-6072

SAFEWAY STORES, INC. DEFENDANT

ORDER

To the extent plaintiff's "Objection" filed August 15, 1983 seeks reconsideration of the Court's August 3, 1983 Order, it is denied.

This 17th day of August, 1983.

HENRY WOODS, U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED PLAINTIFF

V. NO. 81-6072

SAFEWAY STORES, INC. DEFENDANT

ORDER

Plaintiff's motion for a new trial must be denied. The jury verdict was not against the clear weight of the evidence. The pre-trial rulings, evidentiary rulings and other procedural matters objected to by plaintiff were not erroneous. Even if they had individually or collectively constituted error, they did not impair plaintiff's substantial rights and would constitute harmless error.

The assertion that plaintiff's counsel was ill prepared and physically exhausted, if true, was not as a result of the court's disposition of pre-trial matters.

Finding the motion for new trial to be totally without merit, the same is denied.

The objection to this court's refusal to disqualify is overruled and the motion requesting time to supply missing exhibits is denied.

This 26th day of September, 1983.

HENRY WOODS, U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED PLAINTIFF

V. NO. 81-6072

SAFEWAY STORES, INC. DEFENDANT

ORDER

The transcript fairly reflects the record made at trial by all parties on the issue of admission of the death certificate and references to interrogatories. A reading of the transcript demonstrates the proffer made by the plaintiff and the reasoning and ruling of the district court. (See Tr. 112-13 and 351-52.) This court will, therefore, not enter the "Order Settling and Approving Statement of the Proceeding When No Report Was Made" as requested by plaintiff.

This 23rd day of February, 1984.

HENRY WOODS, U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 83-2450

Appeal from the United States District Court for the Western District of Arkansas

Willie R. Bratton,
Administrator of the Estate of Sarah Mallissia Bratton, Deceased,

Plaintiff-Appellant,

v.

Safeway Stores, Inc.,

Defendant-Appellee.

Submitted: April 27, 1984

Filed: May 8, 1984

Before BRIGHT, JOHN R. GIBSON, and BOWMAN, Circuit Judges.

PER CURIAM.

Willie R. Bratton, Administrator of the estate of Sarah Mallissia Bratton, deceased, appeals from an adverse jury verdict in the action brought against

Safeway Stores, Inc. Sarah Bratton, a customer in the Safeway Store in Hot Springs, was pushing a grocery cart when it was struck by a stock truck heavily loaded with potatoes, causing her to fall and to fracture her hip. She died, at age 85 or 86, forty days after the fall. For reversal of the judgment denying both actual and punitive damages, appellant urges numerous grounds. We affirm the judgment of the district court.

Bratton first claims error in the dismissal of an amended complaint brought by the survivors of E. Douglas Bratton, one of Sarah's sons who died some nine months after Sarah's death. In Fountain v. Chicago R. I. & P. Ry., 243 Ark. 947, 422 S.W.2d 878 (1968), the Arkansas Supreme Court clearly held that the administrator or administratrix of the estate of a mother who had died after the fatal accident of her son may not recover for her pecuniary loss or mental anguish

Safeway Stores, Inc. Sarah Bratton, a customer in the Safeway Store in Hot Springs, was pushing a grocery cart when it was struck by a stock truck heavily loaded with potatoes, causing her to fall and to fracture her hip. She died, at age 85 or 86, forty days after the fall. For reversal of the judgment denying both actual and punitive damages, appellant urges numerous grounds. We affirm the judgment of the district court.

Bratton first claims error in the dismissal of an amended complaint brought by the survivors of E. Douglas Bratton, one of Sarah's sons who died some nine months after Sarah's death. In Fountain v. Chicago R. I. & P. Ry., 243 Ark. 947, 422 S.W.2d 878 (1968), the Arkansas Supreme Court clearly held that the administrator or administratrix of the estate of a mother who had died after the fatal accident of her son may not recover for

her pecuniary loss or mental anguish because her rights abate with her death. Bratton argues that Waldrip v. McGarity, 270 Ark. 305, 605 S.W.2d 5 (1980), overrules Fountain. We do not so read Waldrip. Thus, under Fountain, the district court properly ruled that the administrator could not seek recovery on behalf of the two survivors of the deceased son, Douglas.

Bratton then argues that the district court abused its discretion in: numerous rulings on discovery motions after an affidavit of disqualification had been filed with respect to Judge Overton, denial of an affidavit of disqualification of Judge Wood, denial of a motion for continuance or modification of protective orders, refusal to allow a second amended complaint to be filed, limitation of discussion in the opening statement and closing arguments, limitation of examina-

tion of witnesses, refusal of introduction into evidence of the death certificate, refusal to allow amendment of the complaint to conform to proof, the court's conduct during examination of witnesses, and denial of the motion for a new trial. As Bratton recognizes in urging an abuse of discretion in each of these rulings, the rulings were of a discretionary nature. We have carefully examined the entire record in this case and find no abuse of discretion in any of the respects claimed.

Bratton argues error in the court's instructions to the jury, claiming that they focused on the negligence of the employee rather than on Safeway's duty, and that they should have included a "business invitee" instruction. The record is devoid of any objection to the instructions and shows that Bratton's counsel was given the opportunity to

object to the instructions both before argument and again after the instructions were read to the jury. Because no objection was made, no error has been preserved.

Bratton argues that Defendant's counsel, while cross-examining plaintiff's expert witness, misrepresented certain comments made by Bratton's counsel to the expert during a recess. Without objection, it was brought out that Bratton's counsel told the witness something to the effect that if there were objections, he should try to get the answer out before the court stopped him. Defendant's counsel, attempting to improve upon his position, then asked the question again on two occasions. Plaintiff's counsel made some interjection twice before the witness answered that he had been told simply to speak out loudly and clearly. This testimony was certainly not harmful to Bratton.

Any testimony that might have conceivably prejudiced him was not the subject of the objection and thus not preserved for our consideration.

Bratton further claims that counsel for defendant argued his case in his opening statement and made improper closing argument urging plaintiff's counsel's dishonesty. Again, no objections were made to the statements complained of in closing argument. During opening statement certain objections were made and the court made proper corrective rulings.

Bratton claims other errors during closing argument. The record reveals that during closing argument plaintiff's counsel made an objection concerning reimbursement of Sarah's medical expenses by Medicare and Medicaid, and the court ruled that these were damages to the estte and the objection was sustained. Another

objection related to whether the store manager, Merriweather, or Safeway Stores, Inc., operated the store, and counsel's interjection, without the ruling of the court, resulted in the modification of defendant counsel's statement.

During the opening statement of defendant's counsel, Bratton's counsel lodged several objections which resulted in the district court advising the jury that they must consider the testimony and the proof and not what the lawyers state, and admonishing defendant's counsel not to argue the case.

While hard blows were struck during closing argument, particularly with reference to the letter of Dr. Fotioo to the Bratton's earlier counsel, this letter was part of the record received in evidence and no objection was made to this argument. Similarly, the argument concerning the various children of Sarah

being sent to a psychiatrist by plaintiff's counsel was established by the testimony of one of the sons, B. Q. Bratton, without objection. No objection was made to the argument on the subject.

Having carefully considered all of the claims of error and reviewed the entire record, we cannot find that the district court abused its discretion in any of the rulings or that there was error as a matter of law.

One further issue deserves comment. Bratton has asked for production of the tapes of the hearing before Judge Overton and tapes of the trial in this case claiming that the transcript does not reflect certain statements made in the courtroom. The transcript filed by the official court reporter has been certified as a correct transcript of the proceedings. Under 28 U.S.C. §753(b) (1982), such a transcript "shall be deemed prima

facie a correct statement of the testimony taken and proceedings had." Fed. R. App. P. Rule 10(e) provides as follows: "If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth." The district court denied a motion to supplement the record in certain respects, but other claimed omissions were not presented to the district court for ruling. Accordingly, we deny the motion to have the tapes of these particular proceedings filed with this court, or to have the affidavit of counsel concerning bench conferences filed with the court.

The judgment is affirmed. See Eighth Circuit Rule 14.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

[Not to be published.]

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Appeal from the United States District Court for the Western District of Arkansas

83-2450-wa. September Term, 1983

WILLIE R. BRATTON, ETC.,

Appellant,

V.

SAFEWAY STORES, INC.,

Appellee.

The Court has before it appellant's petition for rehearing en banc; appellant's motion for consideration en banc of motion for production of tape, first through third supplements; brief in support of motion for consideration en banc of motion for production of tapes, and objection to a certain member of the Court serving on the panel. The foregoing are hereby denied in all particulars.

Treating the petition for rehearing en banc as a petition for rehearing, said petition is also denied.

June 15, 1984

PROVISIONS OF THE CONSTITUTION AND STATUTES INVOLVED

ARTICLE VI

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

AMENDMENT V [1791]

No person shall be held to answer for

a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VII [1971]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried to jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28, U.S.C., §453.

OATH OF JUSTICES AND JUDGES

Each justice or judge of the United States shall take the following oath or affirmative before performing the duties of his office: "I_____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God."

Title 28, U.S.C., §144.

BIAS OR PREJUDICE OF JUDGE

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel or record stating that it is made in good faith.

Title 28, U.S.C., §455.

DISQUALIFICATION OF JUSTICE, JUDGE, OR MAGISTRATE

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;...

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SUMMARY OF STATEMENT OF JIM CLARK

Jim Clark was pushing a cart down the produce isle when his cart bumped into a shopping cart being pushed by Mrs. Bratton. Mrs. Bratton stumbled backwards and fell. He attempted to come to her aid before she fell but was not able to reach her in time. She complained of pain in her hip. He told her to lay still until someone called an ambulance. He said there was nothing on the floor to cause her to fall, the floor is swept several times a day. Jim Clark has been working for the store approximately 2 years at the time of the accident.

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-2450-WA SEPTEMBER TERM 1983

Appeal from the United States
District Court for the
Western District of Arkansas

Willie R. Bratton, etc.

Appellant,

v.

Safeway Stores Inc.

Appellee.

Appellant's motion for hearing en banc is denied.

April 19, 1984

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-2450-WA SEPTEMBER TERM 1983

Appeal from the United States
District Court for the
Western District of Arkansas

Willie R. Bratton, etc.

Appellant,

v.

Safeway Stores Inc.

Appellee.

This appeal from the United States District Court was submitted on the record of the said District Court and briefs of the parties.

After consideration, it is ordered and adjudged that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in accordance with the opinion of this Court. See Eighth Circuit Rule 14.

May 8, 1984

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED — PLAINTIFF

V. — NO. 81-6072

SAFEWAY STORES, INC. — DEFENDANT

ORDER

Upon Motion of Defendant, SAFEWAY STORES, INC., Plaintiff is hereby prohibited from deposing those individuals and officers associated with SAFEWAY STORES, INC., and listed in Plaintiff's Notice of Deposition.

U.S. DISTRICT JUDGE

July 15, 1983
DATE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED — PLAINTIFF

V. — NO. 81-6072

SAFEWAY STORES, INC. — DEFENDANT

ORDER

Upon Motion of Defendant, SAFEWAY STORES, INC., Plaintiff is hereby prohibited from deposing those individuals and officers associated with SAFEWAY STORES, INC., and listed in Plaintiff's Notice of Deposition filed 23 June 1983.

Discovery in this matter is to be concluded by 1 August 1983.

U.S. DISTRICT JUDGE

July 15, 1983
DATE

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

NO. 81-6072

JUDGE HENRY WOODS

WILLIE R. BRATTON, Administrator of the Estate of SARAH MALLISSIA BRATTON, Deceased v. SAFEWAY STORES, INC.

Jury Verdict. This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED

That the plaintiff(s) take nothing by his (her) (their) complaint hereof, that the action be dismissed on the merits and that the defendant Safeway Stores, Inc. recover of the plaintiff(s) his (her) (their) costs of action.

Clerk
PAT GRAHAM

(BY) DEPUTY CLERK
Joy Hogue

Date 9/1/83
Filed 9/12/83

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

WILLIE R. BRATTON, ADMINISTRATOR OF THE ESTATE OF SARAH MALLISSIA BRATTON, DECEASED — PLAINTIFF

V. — NO. 81-6072

SAFEWAY STORES, INC. — DEFENDANT

ORDER

Plaintiff's motion to file a second amended complaint is without merit and untimely. Plaintiff failed to make the proof at trial which he argues entitles him to amend pursuant to Fed.R.Civ.P. 15 (b). Furthermore, over fifty (50) days have elapsed since the trial of this matter and a motion for new trial has previously been denied.

The motion for production of tapes of Judge Overton's transcript will be denied since, assuming the accuracy of Gene Matthew's affidavit, no ruling of this court would have been altered and the results of the trial would not be affected.

IT IS, THEREFORE ORDERED that plaintiff's motion to amend to conform to proof and motion to product tapes of Judge Overton's hearing on recusal are denied.

This 26th day of October, 1983.

HENRY WOODS, U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-2450-WA SEPTEMBER TERM 1983
Appeal from the United States
District Court for the
Western District of Arkansas

Willie R. Bratton, etc.

Appellant,

v.

Safeway Stores Inc.

Appellee.

The Court has before it appellant's petition for rehearing en banc; appellant's motion for consideration en banc of motion for production of tape, first through third supplements; brief in support of motion for consideration en banc of motion for production of tapes, and objection to a certain member of the Court serving on the panel. The foregoing are hereby denied in all particulars.

Treating the petition for rehearing en banc as a petition for rehearing, said petition is also denied.

June 15, 1984